

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.6617 OF 1993.

Date of Decision:-22-11-1995.

For Approval and Signature

THE HON'BLE MR. JUSTICE N. N. MATHUR

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. M.C. Shah, Advocate, for the petitioners.

Mr. Prasant G. Desai, Advocate, for the respondent no.1.

Miss Priti S. Parmar, A.G.P. for the respondent no.2.

Coram:-N.N. Mathur, J.

Date:-22-11-1995.

Oral Judgment:-

The challenge in the present Special Civil Application is imposition of Theatre Tax @ Rs.50/- per day on Video Theatre in the city of Surat.

2. The petitioners are the members of the Surat Video Theatre Association carrying their business of providing entertainment by video cinema to small section of public. The main grounds of challenge are thus :-

(i) that required procedure for levy the theatre tax has not been followed.

(ii) The impugned levy of theatre tax is in disregard to the provisions of Section 149(1) of the Bombay Provincial Municipal Corporation Act, 1949 (Hereinafter referred to the BPMC Act) as it is not as per the rate and has been fixed lump sum and further it does not provide system of assessment.

(iii) That imposition of theatre tax @ Rs.50/per day is discriminatory and violative of Article 14 of the Constitution of India.

3. I shall deal with the contentions in seriatim. Mr. M.C. Shah learned Advocate appearing for the petitioner submits that so far as imposition of theatre tax is concerned, there is no specific provision regarding manner and method of imposition of theatre tax. However, section 149 of the Act makes provision for procedure to be followed for levy of other taxes. Learned Counsel submits that as the method and or procedure to be followed in levying theatre tax has not been provided specifically under Chapter XI of the B.P.M.C. Act. Section 149 of the BPMC Act would apply for the purpose of the procedure to be followed in the matter of imposition of the theatre tax. Learned Advocate has failed to point out as to what is exactly the procedure which has not been followed.

4. Shri Vinodbhai I. Modi, Deputy Commissioner, on behalf of the respondent no.1 Surat Municipal Corporation has filed the affidavit stating that the Corporation has framed the Rules known as the Theatre Tax Rules in accordance with the provisions of Sub-section 2 of Section 149 of the BPMC Act read with sub-section 1 of Section 451 and the said Rules have been approved by the State Government on 12-4-1977. It is further stated that Standing Committee of Surat Municipal Corporation in its Meeting dated 16-3-1992 passed the Resolution for amendment of the said Theatre Tax Rules more particularly Rule 14 which reads as under:

"Rule 14 - The Theatre Tax shall be levied in respect of a drama, cinema, circus, carnival and other theatrical performance through television or through video scope, video cassette recorder or video cassette player and such other

theatrical performance or shows to which, persons are admitted on payment."

Entry of item No.6 in the category of entertainment was proposed to be amended as under:-

"Theatrical performances through television or through video scope, video cassette recorder or video cassette player, where persons are admitted on payment...Rate per day Rs.50/-."

5. The General House unanimously adopted the Resolution and in accordance with the provisions of Section 455(1) of the B.P.M.C. Act invited suggestions and objections, by publication of notice in two daily news papers as well as in the official gazette . No suggestions or objections were received by the Corporation in pursuance of the notice issued and thus ultimately the Standing Committee adopted the Resolution dated 22-10-1995 and authorized the Commissioner to get sanction from the State Government in accordance with the provisions of the BPMC Act. The Government sanctioned the amendment by the Resolution dated 3-5-1993. The said sanctioned amendment has been published in the Government Gazette dated 14-5-1993. A public notice has also been given by the Corporation on 26-5-1993. Accordingly. the Rules were brought into force with effect from 3-6-1993. In view of the reply given by the Corporation there is no substance in the contention raised by the petitioner.

6. In order to appreciate the second contention it would be proper to read Section 149 of the BPMC Act which is extracted as under:-

"Section 149:-(1) In the event of the Corporation deciding to levy any of the taxes specified in sub-section (2) of section 127 it shall make detailed provision, in so far as such provision is not made by this Act, in the form of rules, modifying, amplifying or adding to the rules at the time in force for the following matters, namely:-

(a) the nature of the tax, the rates thereof, the class or classes of persons, articles or properties liable thereto and the exemptions therefrom, if any to be granted.

(b) the system of assessment and method of recovery and the powers exercisable by the Commissioner or other officers in the collection

of the tax;

(c) the information required to be given of liability to the tax;

(d) the penalties to which persons evading liability or furnishing incorrect or misleading information or failing to furnish information may be subjected;

(e) such other matters, not inconsistent with the provisions of this Act, as may be deemed expedient by the Corporation

Provided that no rules shall be made by the Corporation in respect of any tax coming under clause (f) of sub-section (2) of Section 127 unless the State Government shall have first given provisional approval to the selection of the tax by the Corporation.

(2) The rules shall be submitted by the Corporation to the State Government and the State Government may either refuse to sanction them or refer them back to the Corporation for further consideration or sanction them either as they stand or with such modifications as it thinks fit, not, however, involving an increase in the rate or rates of the levy of the extent thereto.

(3) Any sanction given by the State Government under sub-section(2) shall become operative on such date not earlier than one month from the date of the sanction as the Government shall specify in the order of sanction, and the Corporation shall be competent to levy the tax covered by the sanction as from the date so specified.

(4) The Corporation and the State Government shall take such steps as may be practicable to ensure that the date specified in the order of sanction is the first day of April, unless the sanction is given in pursuance of a proposal for supplementary taxation under section 150:

Provided that nothing in sub-section(4) shall affect the power of the Corporation to levy a tax as from a date later than the first day of March immediately preceding and if the State Government in the order of sanction

specifies a date later than the first day of April for the commencement of the levy of the tax.

- (5) The provisions of this section shall apply, as far as may be, to any alteration which the Corporation may from time to time decide to make in the rates fixed for any tax or in the class or classes of persons, articles, or properties liable thereto or in the exemptions thereon, if any, to be granted.

7. The main thrust of arguments of the learned Counsel is on the words "the rates thereof" employed in clause(a) of Sub-section (1) of Section 149 of the B.P.M.C. Act. He submits that in view of words used "rates thereof" Corporation is authorised to levy theatre tax per head, i.e. per ticket and not lump sum as Rs.50/-. The learned Counsel has of course raised a ingenious argument, but he has not been able to further carry and substantiate. Rate Connotes Scale according to which a tax is to be levied. Lump sum, means a sum payable as a single amount in contrast to installments. In the context of tax, a tax in lump sum is payment of tax in lieu of future payments. Say Road Tax on a Motor Vehicle. An owner of the vehicle is liable to pay tax on yearly basis. However, Statute provides that in lieu of the yearly tax one may pay a lump sum amount in lieu of the future tax known as "one time tax". Therefore, respondent has not asked to pay tax for the future period in lump sum, but the rate of tax as Rs.50/- per day per theatre is provided and that is "the rate thereof" is contemplated under Section 149(1)(a) of the Act. The contention therefore is rejected being devoid of force.

8. It is further contended that that as required by Section 149 of the BPMC Act prescribes that in the event of the Corporation decides to levy any of the tax specified in Sub-section (a) of Section 149(1) a detailed provision with respect to nature of tax, rates thereof, the class or classes of persons, liable to pay thereto and the exemption therefrom, any further system of assessment is required to be provided. He submits that nothing has been done in the present case as required by Section 149 of the BPMC Act. This contention has no substance. The nature of the tax has been provided as the theatre tax rates have been provided as Rs.50/- per day. The provision of assessment also been provided under the Theatre Tax Rules. Thus, this second contention also deserves to be rejected.

9. Turning to the third ground, it is submitted that in the city of Surat there are 50 video theatres and number of big cinema halls. The sitting capacity of the video centre is varying from 125 to 80. Normal charges per head are Rs.4/- to 6/-. Normal shows per day are four. The big cinema halls are having sitting capacity varies from 50 to 800. The charges are from Rs.6/- to 20/- per ticket. The big cinemas are required to pay theatre tax at Rs.15/-. It is contended that on the face the levy of tax between the persons who are running the video centre and the big cinemas are discriminatory. This contention is refuted by the respondent Corporation. Mr. Vinod I. Modi, Dy. Commissioner, in his affidavit, has stated that the petitioners have not pointed out that while the theatre tax on the video centre is levied @ Rs.50/- per day inspite of the fact that they are running 4 to 5 shows per day. On the contrary, in case of big cinema halls imposition of theatre tax is at the rate of Rs.15/per show. Thus, there are minimum four shows and they are required to pay Rs.60/per day.

10. The petitioners have built the case of on this discrimination on the wrong premises that on the big cinema halls the theatre tax is imposed @ Rs.15/- per day whereas in fact this theatre tax @ Rs.15/- is per show. Thus, the comparable figure is not 50 and 15 and 60 (In case of cinema Hall minimum number of show taken to be four they are required to pay 15 x i.e. Rs.60 per day. In view of the matter, the levy of the theatre tax cannot be said to be unreasonable and discriminatory. This, contention also deserves to be rejected.

10.. No other contention is urged.

11. In view of the aforesaid, there is no substance in this Special Civil Application and hence the same is rejected. Rule is discharged. There shall be no order as to costs.